

B. Execution of Decisions of Foreign Courts

1. Recognition of Decisions of Foreign Courts

In order to secure the execution in the Russian Federation of a judgment rendered by a foreign court, the decision and judgment of the foreign court must be formally recognized by a Russian court and an execution order issued.³⁸ The only exception to this rule concerns decisions issued by the courts of the member countries of the Commonwealth of Independent states. An agreement “On the Procedure for Resolution of Disputes Connected with Conduct of Economic Activity” was signed by the CIS member states (except Georgia) in Kiev in 1992, which provides for the treatment of court decisions of member countries in the same manner as the decisions of national courts in the country in which execution is sought.

The procedure for the execution of the decisions of foreign courts is to be determined by the international agreements of the Russian Federation, if such agreement exists between the Russian Federation and the relevant country. There is no single applicable convention governing the execution of the decisions of foreign courts, and in each case the parties must determine whether a corresponding agreement exists between Russia and the foreign country concerning the reciprocal recognition of civil judgments, and the terms of any such agreement. Russia is signatory to a number of agreements concerning mutual legal assistance which include provisions concerning the mutual recognition and enforcement of court judgments. All of these agreements, however, provide for the formal recognition by a Russian court of the foreign decisions and its execution on the basis of an order of such court. ***At the time of this writing, no such agreement exists between the Russian Federation and the United States.***

As an example of the types of issues that may be raised concerning the recognition and execution of foreign judgments, the Convention on Legal Assistance which applies as between the countries of the Commonwealth of Independent States (signed in Minsk in 1993) lists the following bases for refusal to recognize or execute a court decision of another state:

- ✕ the decision has not entered into legal force or is not subject to execution in the state in which it was issued, with the exception of cases in which the decision is subject to immediate execution prior to its entry into legal force;

³⁸ Such recognition is, of course, required only for the execution of the foreign judgment on assets located in the Russian Federation. Enforcement of a foreign court judgment against property of the debtor located in the country where the judgment was issued will be governed by the laws of that jurisdiction.

- ✗ the respondent or his representative did not participate in the consideration of the case because of a failure to inform them properly about the proceedings;
- ✗ a decision of a court on the same matter between the same persons already exists in the country in which execution is sought or from a third country or proceedings in such a case were initiated in the country in which recognition has been sought prior to those which gave rise to the decision;
- ✗ the case is within the exclusive competence of the institutions in the country in which recognition is sought;
- ✗ there is no document supporting the agreement of the parties in the case, if the decision is based on contractually agreed venue;
- ✗ the limitations period for execution of the decision in the country in which recognition and execution are sought has expired.³⁹

In general, the relevant international agreements provide that a decision of a foreign court is to be recognized and enforced by the competent court in the state in which execution is sought. There has been some confusion regarding which courts in the Russian Federation should be considered the “competent court” with respect to the enforcement of foreign judgments. The term “competent court” might be considered to refer to the court that would be competent to consider the case if it were filed in the Russian Federation, or in the alternative could be any court defined as competent by Russian legislation. This question is not clearly resolved by the procedural legislation currently in effect.

There is no legislation in the Russian Federation which directly defines the courts that are to be considered “competent” for purposes of execution of foreign judgments. The Civil Procedure Code, which applies to the courts of general jurisdiction, does make reference in Article 437 to the enforcement of foreign court decisions by those courts, stating that the procedures are to be determined by international agreements. An Edict of the Presidium of the Supreme Soviet of the USSR “On the Recognition and Enforcement in the USSR of the Decisions of Foreign Courts and Arbitral Tribunals,” issued in 1988,⁴⁰ provides some limited guidance on procedures for enforcement of such decisions, but as the arbitrazh courts did not exist at the time of passage of that Edict, there was no need to distinguish between the two court systems regarding competence in such questions. The currently effective Arbitrazh Procedure Code contains no direct reference to the enforcement of foreign judgments, but does state in Article 215 that the arbitrazh courts are competent to undertake particular court actions or fulfill mandates by way of legal

³⁹ Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases.

⁴⁰ Edict of the Presidium of the Supreme Soviet of the USSR “On the Recognition and Enforcement in the USSR of the Decisions of Foreign Courts and Arbitral Tribunals,” *Vestnik Verkhovnogo Soveta SSSR* [Bulletin of the Supreme Soviet of the USSR], 1988, No. 29, Item 427. Legislation and other legal acts of the USSR apply in the Russian Federation unless they are superceded by Russian legislation or conflict with the constitution or laws of the RF.

assistance. If the recognition and enforcement of foreign court judgments is considered such legal assistance, then the arbitrazh courts on this basis have jurisdiction to consider requests for the recognition and enforcement of foreign court judgments. This interpretation is currently accepted by the arbitrazh courts, and on this basis those courts do accept petitions concerning the recognition and enforcement of foreign judgments when the judgment concerns a case that would be within the jurisdiction of the arbitrazh courts if considered in the Russian Federation. Unlike most parts of the competence of the arbitrazh courts, however, this type of case is not considered by the arbitrazh courts to be within the exclusive jurisdiction of the arbitrazh courts, but rather to be a matter of alternative jurisdiction, in which the party seeking the enforcement of the foreign judgment may choose which court to approach with the corresponding petition.

Confusion does continue, however, and some in the Russian legal community, including some courts, believe that foreign court decisions may only be recognized and enforced by the courts of general jurisdiction. This opinion is based on the concept of the arbitrazh courts as specialized courts, with a competence strictly limited to those cases directly placed within their jurisdiction by legislation, and a view of the language of Article 215 of the APC as insufficient to clearly assign such cases to the arbitrazh courts. In practice, there are instances in which courts of general jurisdiction accept petitions concerning the recognition of foreign judgments related to commercial disputes and others in which such courts reject such petitions, stating that the case is within the jurisdiction of the arbitrazh courts. This confusion, like the confusion regarding the enforcement of arbitral awards (discussed below), is a product of the change in the competence of the arbitrazh courts in 1995, when they received jurisdiction over cases in which foreign parties or interests are involved. The preparation of a new Arbitrazh Procedure Code which is currently underway includes amendments which will clarify the issue of competence and provide clarity with respect to procedures. The passage of the amended APC, and of a new CPC, should substantially reduce confusion in this area.

With respect to the arbitrazh courts, it should be noted that the APC requires arbitrazh courts to leave a suit without consideration when a competent court of a foreign state is considering a case concerning the same persons and the same subject and grounds, or has issued a decision on the case. The foreign court must have accepted the case for consideration prior to the filing of the case in the arbitrazh court in the Russian Federation. This rule is not applied, however, if the decision of the court is not (will not be) subject to recognition or execution on the territory of the Russian Federation, or is within the exclusive competence of the arbitrazh court in the Russian Federation. Such cases would include, for example, cases concerning rights in immovable property located in the Russian Federation.

2. Limitations Period for Execution of Foreign Court Judgments

According to the CPC, recognition and enforcement of the decision of a foreign court may be sought within three years of the entry of the decision into force. The Law on Execution recognizes execution orders based on a foreign court decision (Article 7), but does not state a specific period for the presentation of an execution order based on a

foreign court decision. Instead, Article 14 of that law states generally that an execution order issued by a court of general jurisdiction of the Russian Federation may be presented for execution within three years of the time of entry of the court act into force. The language of the relevant provision refers to execution orders issued “on the basis of” court acts of the courts of general jurisdiction. An execution order issued on the basis of a foreign court decision is not dealt with separately in the Article, leaving it somewhat uncertain whether the time period is to be calculated from the time of entry of the foreign court judgment into force or from the time of the entry of the court act issuing the execution order (the first act by the Russian court of general jurisdiction) into force. By analogy with a domestic court decision, however, the period would be calculated from the time of entry of the underlying foreign decision into force.

The interpretation of the provision is important, in that it may define the period for the presentation of the execution order by the time of entry into force of the underlying foreign court decision and not on the basis of the time of issuance of the execution order itself by the Russian court. In fact, the period in which an execution order may be sought from a Russian court and the period in which the execution order issued by a Russian court may be presented for execution appear to be identical under these provisions. In practice, time will be required to obtain the execution order from a court, and it is possible that a proceeding seeking recognition and enforcement filed late in the three year period could result in the issuance of an execution order after the same three year period permitted for its presentation. For this reason, the recognition of the foreign court judgment and issuance of the corresponding execution order should be sought well before the expiration of the three year period currently established for that step in the process.

There is no provision in the APC concerning the limitation period for a petition for an execution order based on a foreign court decision, nor concerning the period for presentation of such an order for execution. As stated above, the Law on Execution also fails to state a period for the presentation of execution orders based on a foreign court judgment. The general period applicable to execution orders based on acts of the arbitrazh courts is six months. Since an execution order issued by an arbitrazh court on the basis of a foreign court judgment is not based on an act of an arbitrazh court, this limitation would seem not to apply. As there is no other period stated, however, there remains a question concerning whether the six month period envisioned for court acts of the arbitrazh courts or the three year period for acts of the courts of general jurisdiction is to apply.

3. Security for Execution of the Judgment

The currently effective Civil Procedure Code does not contain specific provisions on security for a judgment. The Code does contain general provisions concerning security for a claim during the consideration of a case,⁴¹ but these are written with the apparent presumption that a court within the system will be considering the case in its substance,

⁴¹ See Chapter 13 of the CPC, Articles 133-140.

and require that the court “considering the case” also consider the request for security. It is not clear whether a court considering a petition for the recognition and enforcement of a foreign court decision would consider this petition to be a “suit” within the meaning of the term used in the provisions concerning security measures, or would consider its consideration of a petition for enforcement to be “considering the case” on the enforcement. If so, then the general provisions of those articles would apply to allow the court to impose measures of security at the time of issuance of the execution order. The APC treats measures of security for execution of the judgment separately from those for security of the suit during its consideration, and it is those provisions of the APC which would apply to security for the execution of a foreign court decision recognized by an arbitrazh court. The separate treatment in the APC of security for the suit during its initial consideration in substance and security for the execution of the judgment suggests that the general provisions of the CPC do not encompass measures imposed solely to secure the execution. If the CPC is interpreted in this way, there are no such measures available to a judgment creditor seeking security for execution from a court of general jurisdiction.

It should be noted, however, that the provisions generally allowing the court enforcer to impose distraint on property at the time of the initiation of the execution proceedings would seem to apply equally to the court enforcer’s execution of an order enforcing a foreign court decision. Thus, although security measures might not be directly available from a court of general jurisdiction, they could be imposed by the court enforcer when initiating the execution. This would require a petition from the judgment creditor requesting the immediate distraint of property to be submitted at the time of presentation of the execution order to the court enforcer for execution proceedings.